


To: The Honorable Mayor and City Council

From: Wisler Pierre-Louis, P.E., Interim Public Works Director 

Date: April 22, 2014

RE: Maintenance Memorandum of Agreement with the Florida Department of Transportation for the installation of crosswalks in downtown North Miami

RECOMMENDATION

It is recommended that the Mayor and Council approve the attached resolution authorizing the City Manager to execute a Maintenance Memorandum of Agreement with the Florida Department of Transportation (FDOT) to maintain patterned, textured crosswalks in downtown North Miami.

BACKGROUND

An important goal of the City's Comprehensive Plan, Downtown Master Plan and various other studies is the enhancement of the pedestrian experience in Downtown North Miami. A key improvement that can be made in the public right-of-way is the installation of patterned textured pavement crosswalks at key intersections downtown. However, this right-of-way is part of the State Highway System.

During the Florida Department of Transportation's repaving of the NE 125th Street, the City has caused to be installed patterned, textured paving at crosswalks at the intersections of NE 8th, NE 9th and NE 10th Avenues and NE 125th Street. In this agreement, the City is agreeing to maintain the crosswalks in perpetuity. This means the City will be responsible for friction testing of the crosswalks and repairing if necessary.

Attachments

Resolution

Maintenance Memorandum of Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF
THE OF THE CITY OF NORTH MIAMI, FLORIDA,
AUTHORIZING THE CITY MANAGER TO EXECUTE A
PATTERNED PAVEMENT CROSSWALKS & SIDEWALK
PAVERS MAINTENANCE MEMORANDUM OF
AGREEMENT BETWEEN THE CITY OF NORTH MIAMI
AND THE FLORIDA DEPARTMENT OF TRANSPORTATION
(FDOT), IN SUBSTANTIALLY THE ATTACHED FORM,
DESIGNATING AND SETTING FORTH THE
RESPONSIBILITIES OF EACH PARTY WITH REGARDS TO
THE MAINTENANCE OF THE PATTERNED-PAVEMENT
CROSSWALKS INSTALLED PURSUANT TO THE LOCALLY
FUNDED AGREEMENT BETWEEN THE CITY AND FDOT;
PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL
OTHER PURPOSES.**

WHEREAS, as part of the State of Florida Highway System, the Florida Department of Transportation (“FDOT”) is currently in the process of repaving Northeast 125th Street from Northeast 7th Avenue to Biscayne Boulevard (“Services”); and

WHEREAS, City of North Miami (“City”) administration requested that the FDOT incorporate the design and installation of patterned-pavement crosswalks at key intersections (“Crosswalks”), concurrently with the provision of Services; and

WHEREAS, on April 22, 2014, the Mayor and City Council passed and adopted a Resolution authorizing the City Manager to execute an agreement with FDOT for the design and installation of Crosswalks on behalf of the City (“Agreement”); and

WHEREAS, under the Agreement, FDOT will develop Crosswalks at the following desired intersections: Northeast 125th Street and Northeast 8th Avenue, Northeast 9th Avenue, and Northeast 10th Avenue; and

WHEREAS, in conjunction with the Agreement, the City Manager seeks the authorization to enter into a Patterned Pavement Crosswalks & Sidewalk Pavers Maintenance Memorandum of Agreement between the City and FDOT, designating and setting forth the responsibilities of the City and FDOT with regards to the maintenance of the Crosswalks installed pursuant to the Agreement (“Maintenance Memorandum”); and

WHEREAS, the Mayor and City Council find that entering into a Maintenance Memorandum of Agreement, in substantially the attached form, for the maintenance and preservation of the Crosswalks, is in the best interest of the City.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AS FOLLOWS:

Section 1. **Authority of City Manager.** The Mayor and Council of the City of North Miami, Florida, hereby authorize the City Manager to execute a *Patterned Pavement Crosswalks & Sidewalk Pavers Maintenance Memorandum of Agreement* between the City of North Miami and the Florida Department of Transportation (FDOT), in substantially the attached form, designating and setting forth the responsibilities of each party with regards to the maintenance of the patterned-pavement crosswalks installed pursuant to the Locally Funded Agreement between the City and FDOT.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of April, 2014.

LUCIE M. TONDREAU
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Lucie M. Tondreau _____ (Yes) _____ (No)

Vice Mayor Philippe Bien-Aime _____ (Yes) _____ (No)

Councilperson Scott Galvin _____ (Yes) _____ (No)

Councilperson Carol Keys, Esq. _____ (Yes) _____ (No)

Councilperson Marie Erlande Steril _____ (Yes) _____ (No)

**FLORIDA DEPARTMENT OF TRANSPORTATION
PATTERNED PAVEMENT CROSSWALKS & SIDEWALK PAVERS
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF NORTH MIAMI**

This **AGREEMENT**, entered into on _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF NORTH MIAMI**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over **State Road (S.R.) 922/NE 125th Street from NE 7th Avenue (M.P. 1.650) to West of Biscayne Boulevard (M.P. 2.025)**, which is located within the limits of the **CITY**; and
- B. The **DEPARTMENT**, pursuant to Contract # T-6370, has drafted design plans for beautification improvements on S.R. 922/NE 125th Street from NE 7th Avenue to West of Biscayne Boulevard, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **DEPARTMENT** will install patterned pavement crosswalks and sidewalk pavers within the **PROJECT LIMITS** in accordance with the design plans for Contract # T-6370 (the "Project"); and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the patterned pavement crosswalks and sidewalk pavers installed pursuant to the Project; and
- E. The **CITY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. DEPARTMENT RESPONSIBILITIES

The **PARTIES** agree that by executing this **AGREEMENT** all maintenance responsibilities pertaining to the patterned pavement crosswalks and sidewalk pavers within the **PROJECT LIMITS** are assigned to the **CITY** in perpetuity upon the **DEPARTMENT's** release of its contractor from further warranty work and responsibility. Additionally, the **PARTIES** agree that all maintenance responsibilities pertaining to the patterned pavement crosswalks and sidewalk pavers shall be assigned to the **CITY** in perpetuity upon the **DEPARTMENT's** issuance of the Notice of Final Acceptance of the Project to its contractor.

3. CITY'S MAINTENANCE RESPONSIBILITIES

The **CITY** shall maintain the patterned pavement crosswalks and sidewalk pavers in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time, and in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY's** maintenance obligations shall include but not be limited to:

- a) Sweep the patterned pavement crosswalks and sidewalk paver periodically to keep them free of debris and to maintain an aesthetically pleasing condition. A light pressure washing may be necessary for heavy stain removal or cleaning.

- b) Remove and properly dispose of litter from patterned pavement surfaces and sidewalk pavers.
- c) For any routine repairs or replacement due to noticeable color scarring or surface deterioration of the patterned pavement surfaces and sidewalk pavers, the product authorized installer should be contacted.
- d) Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.
- e) Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

3.1 Pattern Pavement Crosswalks:

- a) Within sixty (60) days of project acceptance by the **DEPARTMENT**, all lanes of each patterned crosswalk shall be evaluated for surface friction. The friction test shall be conducted using either a locked wheel tester in accordance with FM 5-592 (Florida Test Method for Friction Measuring Protocol for Patterned Pavements) or a Dynamic Friction Tester in accordance with ASTM E1911. FM5-592 can be accessed at the following link:

<http://materials.dot.state.fl.us/smo/administration/resources/library/publications/fstm/Methods/fm5-592.pdf>

The initial friction resistance shall be at least 35 obtained at 40 mph with a ribbed tire test (FN40R) or equivalent. Failure to achieve this minimum resistance shall require all deficient crosswalk areas to be removed to their full extent (lane-by-lane) and replaced with the same product installed initially. If the **DEPARTMENT** determines that more than 50% of the

lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the Qualified Products List (QPL) or replaced with conventional pavement.

- b) Approximately one (1) year after project acceptance and every two (2) years thereafter and for the life of the adjacent pavement, only the outside traffic lane areas of each patterned crosswalk shall be tested for friction resistance in accordance with ASTM E274 or ASTM E1911. Friction resistance shall, at a minimum, have a FN40R value of 35 (or equivalent).
- c) The results of all friction tests shall be sent to the District's Warranty Coordinator with a cover letter either certifying that the crosswalks comply with the minimum friction criteria, or stating what remedial action will be taken to restore the friction.
- d) Failure to achieve the minimum resistance shall require all lanes of the crosswalk to be friction tested to determine the extent of the deficiency. All deficient areas shall be removed to their full extent (lane-by-lane) and replaced with the same product installed initially. If the **DEPARTMENT** determines that more than 50% of the lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the QPL or replaced with conventional pavement.
- e) When remedial action is required in accordance with the above requirements, the **CITY** shall complete all necessary repairs at its own expense within ninety (90) days of the date when the deficiency was identified. No more than two (2) full depth patterned pavement repairs shall be made to an area without first resurfacing the underlying pavement to 1" minimum depth.
- f) The **DEPARTMENT** will not be responsible for replacing the treatment following any construction activities in the vicinity of the treatment.

- g) Should the **CITY** fail to satisfactorily perform any required remedial work in accordance with this **AGREEMENT**, the **DEPARTMENT** reserves the right to replace the patterned pavement with conventional pavement (matching the adjacent pavement) and bill the **CITY** for this cost.

3.2 Sidewalk Pavers:

- a) The **CITY** shall conduct annual condition surveys of the pavers for gaps, settlement, drop-offs, and other deficiencies for the life of the sidewalk.
- b) Gaps within the pavers shall not exceed a quarter of an inch (0.25").
- c) Differential settlement within the pavers shall not exceed a quarter of an inch (0.25") in depth.
- d) When remedial action is required in accordance with the above requirements, the **CITY** at its own expense shall complete all necessary repairs within ninety (90) days of the date the deficiency is identified.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the patterned pavement crosswalks and sidewalk pavers to ensure that the **CITY** is performing its duties pursuant to this **AGREEMENT**. The **DEPARTMENT** shall share with the **CITY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this Agreement. The **CITY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **CITY's** responsibilities as established herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **CITY MANAGER**, to

notify the **CITY** of the maintenance deficiencies. From the date of receipt of the notice, the **CITY** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the patterned pavement crosswalks and sidewalk pavers, or a part thereof and invoice the **CITY** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all patterned pavement crosswalks and sidewalk pavers located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the CITY: City of North Miami
776 NE 125th Street
North Miami, Florida 33161
Attention: City Manager

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE PATTERNED

PAVEMENT CROSSWALKS AND SIDEWALK PAVERS

- a. The **PARTIES** agree that the patterned pavement crosswalks and sidewalk pavers addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT's** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the patterned pavement crosswalks and sidewalk pavers, the **CITY's** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

7. TERMINATION

This **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.
- c. If mutually agreed to by both **PARTIES**, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

8. TERMS

- a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 7.

b. E-Verify

The **CITY** / Contractors or Vendors:

- i. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- ii. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

The **CITY** shall insert the above clause into any contract entered into by the **CITY** with vendors or contractors hired by the **CITY** for purposes of performing its duties under this **AGREEMENT**.

- c. This writing embodies the entire agreement and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie

exclusively in a state court of proper jurisdiction in Leon County, Florida.

- g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this agreement.
- h. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- i. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- j. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.
- k. The **CITY** is a Florida municipal corporation, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **CITY's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind

whatsoever caused by, arising out of, or related to the **CITY's** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **CITY**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence of the **DEPARTMENT**.

The **CITY's** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **CITY's** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **CITY** of a claim shall not release the **CITY** of the above duty to defend and indemnify the **DEPARTMENT**.

The **CITY** shall pay all costs and fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **CITY's** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY's** duty to defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **CITY**.

-----REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK-----

IN WITNESS WHEREOF, the PARTIES hereto have caused these presents to be executed the day and year first above written.

CITY OF NORTH MIAMI:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____
CITY Manager

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the patterned pavement crosswalks and sidewalk pavers to be maintained under this **AGREEMENT**.

State Road Number: 922/NE 125th Street

Agreement Limits: From NE 7th Avenue (M.P 1.650) to West of Biscayne Boulevard (M.P 2.025)

County: Miami-Dade

Patterned Pavement Crosswalks Intersections 125th Street &:

- NE 8th Avenue (all four legs)
- NE 9th Avenue (all four legs)
- NE 10th Avenue (all four legs)

Sidewalk Pavers at Intersection(s) 125th Street &:

- NE 10th Avenue (North-West corner)

EXHIBIT 'B'

CITY OF NORTH MIAMI RESOLUTION

To be herein incorporated once ratified by the CITY Council.

DRAFT